THE NEW AUSTRALIAN COMMONWEALTH

In any description of the present political condition of Australia the federal constitution naturally commands the first place. But students of politics have already had sufficient opportunity of becoming acquainted with the history of the federal movement, and with the structure of the new commonwealth to make it unnecessary to examine the constitution in any detail.[1] To a very large extent the framers of the constitution worked upon existing models; and the principal interest in the new constitution lies in those parts which, departing from those models, express some distinctively Australian characteristic or aspiration, or bear upon the position of Australia in the empire. Moreover, it is above all the economic experiments of Australia—her legislation and administration—which form her principal claim to attention whether of students or of politicians; the activity rather than the structure of her government.

The natural model for the union of a group of British colonies would have been the Dominion of Canada of which the constituent act in its preamble recites the desire of the provinces to be united into one dominion "with a constitution similar in principle to that of the United Kingdom." But the character of the Canadian union was determined by special circumstances both internal and external, very different from any which exist in regard to Australia. The fundamental character of the dominion—the possession of residuary power by the dominion government and the subordination of the provinces to the dominion government—was the natural outcome of the existing consolidation of the provinces of Upper and Lower Canada. In the same way if the policy of "Home Rule all round" were adopted in the United Kingdom, we should expect to find residuary power and some controlling power in the imperial parliament and the imperial government. Again, it must be remembered that the years 1864-67 during which the Canadian Constitution was taking shape, were years full of lessons from the neighboring union. The War of Secession had dis-

[1] The writer may refer to Bryce's Studies in History and Jurisprudence, Essay VIII. Quick & Garran's Annotated Constitution of the Australian Commonwealth; Clark's Studies in Australian Constitutional Law; Jethro Brown's New Democracy; and Moore's Commonwealth of Australia.

credited the principle of state sovereignty, and the victorious states of the North were engaged in re-establishing their constitution upon a basis which greatly increased the central power, and might indeed, but for the restricted interpretation of the Supreme Court,[2] have given to Congress a general controlling power over the states. In Australia, the several colonies had too long enjoyed separate self-government to be ready to part with their independence save in certain definite matters; and the principle laid down in 1891 "That the powers, and privileges and territorial rights of the several existing colonies shall remain intact except in respect to such surrenders as may be agreed upon as necessary and incidental to the power and authority of the national federal government," was never seriously in danger.

On the other hand, the whole course of the nineteenth century has been to raise matters which at the formation of the American Union, could be treated as local and particular, to matters of common national concern. "The fathers of the American Constitution," says Mr. Bryce, "had no wish to produce uniformity amongst the states in government or institutions, and little care to protect the citizens against abuses of state power. Their chief aim was to secure the national government against encroachment on the part of the states and to prevent causes of quarrel both between the central and state authorities, and between the several states." But distance has been constantly shrinking, and divergence of laws and institutions in two great countries where inhabitants have perpetual intercourse, is to-day infinitely more inconvenient than the divergences of custom in neighboring localities a few centuries ago. The nineteenth century has seen the growth of a whole body of laws for the settlement of the conflict of laws and jurisdictions; but it is obviously simpler and more convenient to go to the root of the matter, and establish a uniform law under a central government. Hence the great national states called into existence by the movements of the century have made "the law" to a great extent a national law. In Germany there is a high degree of legal centralization; the legislative power of the empire extends over the whole domain of ordinary civil and criminal law, and this power has recently given a uniform code of laws to the empire. Canada was quite alive to the defects of the United States system in respect

[2] See the Slaughter House Cases (1873,) 16 Wallace 36,

to the criminal and private law, and accordingly vested in the dominion parliament power over criminal law and procedure, over the laws of marriage and divorce and over a large part of commercial law. It is not surprising that, in the number and character of matters assigned to the federal parliament, the Australian Constitution follows the Dominion of Canada rather than the United States. Criminal law indeed is not made a federal matter, but full power is given to provide for the extradition of criminals and for all matters auxiliary to criminal procedure; and over family and commercial law, the power of the commonwealth parliament is even greater than that of the dominion parliament in Canada.

If Australia has borrowed her federation from the United States, her democracy is her own; and the prevalence of the democratic principle in its most modern guise is the predominant as it is the distinctively characteristic feature of the constitution. It is true that in a federal government, the simple democratic plan of pure majority rule must make compromises with the principle of state right. But that is the only compromise which it makes in Australia, and the concessions made to the democratic principle contain many important points of contrast with the Constitution of the United States. The American Constitution was born in distrust of power. To possess power was to abuse it; therefore in devising the organs of government, the first object was less to secure their co-operation than to ensure that each might be a check on the natural tendencies of the other. Large states where the central power is far off, were more dangerous to liberty than small states where popular control was more readily exerted; therefore, central power was to be no greater than was absolutely necessary for security against external attack and internal dissension. The doctrine "Trust in the people" carried the fathers of the constitution but a little way on the democratic road. Direct participation by the people in the ordinary functions of central government seemed equally impracticable and mischievous. The people could at most be choosers, and even here they were to act at second-hand; there was to be a college of electors who would exercise a free judgment in a choice of a president; the senators were to be chosen by the legislatures of the states. Thus the most important offices in the union were to be filled without the pressure of popular clamor. The constitution was accepted not by direct vote of the people, but

by state conventions, and amendments were to be approved rather by the state legislatures or by state conventions. The Constitution of the Commonwealth of Australia on the other hand bears every mark of confidence in the capacity of the people to undertake every function of government. In the constitution of both houses of the parliament, in the relations of the houses, and in the amendment of the constitution, the people play a direct part. There are no intermediaries in the formation of the senate; the electors are the arbiters between the houses; there are no conventions of select men to approve alterations in the constitution. Artificial majorities are not required, though the federal principle requires that for an amendment of the constitution, the majority of voters shall also represent a majority of states, and the representation of each state in parliament and its territory are protected by requiring the concurrence of such state expressed through its electors. The system governing the qualification of members and electors establishes those qualifications on the widest possible basis, and provides that at any election no elector shall vote more than once.

In another notable matter the Australian Constitution differs markedly from that of the United States. In America, the checks and balances devised by the fathers of the constitution were deemed an insufficient restraint of power, and were immediately supplemented by a comprehensive Bill of Rights which secured the liberties of the citizen against attack from the federal government by putting them under the protection of the constitution. More remarkable still in a federal constitution, there were a few provisions protecting the rights of citizens of the states against their own state government. It need hardly be said that this spirit of distrust has so grown that the states' constitutions put many varied rights of the citizens beyond the reach of the legislature, and that the amendments of the federal constitution which followed the War of Secession afford further security to individual right. From the Australian Constitution, such guarantees of individual right are conspicuously absent. When the constitution left the Adelaide Convention in 1897 it provided that no state should make any law prohibiting the free exercise of any religion and that a state should not deny to any person within its jurisdiction the equal protection of its laws. This provision however disappeared, and every restraint imposed by the constitution upon commonwealth, parlia-

ment or state (except the provisions of Section 116 whereby the commonwealth parliament may not make any law prohibiting the free exercise of any religion or establishing any religious test) may be referred to federal needs. An illustration of the guiding principle may be found in the history of the clause prescribing uniformity of commonwealth taxation. When it was found that the clause might be read to protect individuals or classes against discrimination, care was taken to substitute words of geographical description. The great underlying principle is that the rights of individuals are sufficiently protected by ensuring as far as possible to each a share and an equal share in political power.

The history of Australia since the inauguration of the commonwealth with so much pomp and ceremony on January 1, 1901, may best be described by reference to Mr. Rudyard Kipling's account of "The Ship that Found Herself." No sooner was the ship launched than it appeared as though everything remained to be done. The constitution had done no more than provide the power for establishing the organs of government and prescribe their principal functions. All the organs—save the principal executive office of governor-general—had to be established, and each had to learn and to work out for itself in conjunction with the rest, its part in the whole. It was apparent that the constitution was more experimental than had been supposed.

Following the constitutions of the self-governing colonies, the commonwealth constitution provides for a parliamentary executive, and suggests rather than requires the adoption of the cabinet system. A few years ago, there was good reason for doubting the continuance of that system in Australia. The downfall of one ministry after another had undoubtedly a demoralizing effect upon political life, and the great importance of administrative capacity and experience made it intolerable that affairs should be carried on with the ever shifting personnel supplied by parliamentary exigencies. The American system of non-parliamentary executive was not regarded with favor, but in most of the colonies a good deal of attention was fixed upon the Swiss system of a ministry elected by the legislature for a fixed term of years as one which gave security of tenure coupled with responsibility to the legislature, and, as being based on direct election, appeared more essentially democratic than the cabinet system which in a colony rests in point of

form, upon a direction that certain appointments shall be made by the governor alone (*i. e.* not upon the advice of his executive council). In recent years, however, a great change has come over the politics of Australia and New Zealand; long tenure of office and stability of government have superseded the kaleidoscopic movements of a few years ago, and there was no more notable feature in which the convention of 1897-98 differed from the convention of 1891 than in its unquestioning acceptance of the cabinet system.

It is not to be overlooked that there are special difficulties in the application of cabinet government to a federal system. Responsibility to parliament has meant in practice responsibility to the lower house, and has proved practicable only because the upper house has in general accepted the position of a second chamber. In a federal government, the states' house can hardly thus consent to efface itself, and may well demand to be consulted in the formation of cabinets. Hence it has been urged that the cabinet is essentially a feature of unitary government, and is impracticable in a federal government; that a ministry cannot serve two masters—the senate and the house; that if the weakness of the executive is one of the greatest dangers of party government with responsibility to one house, responsibility to two houses would break down the executive machinery altogether, and that responsibility to one house alone means unitary, not federal government. The answer to this seems to be that neither the cabinet system nor federal government is a rigid institution. The liability of the first to change and mould itself to conditions is its one permanent feature and perhaps its principal advantage. Both "federal" and "unitary" governments are commonly mere approximations to a type, and neither necessarily excludes all the features of the other. Of course it is obvious that with two irreconcilable chambers of the legislature exercising co-ordinate power, the cabinet system would break down, and so also would any other system that could be devised. But in the commonwealth the constitution of the two houses is a sufficient guarantee that they will not be in perpetual conflict; and the cabinet system depends so much upon conventions and understandings that it would be rash to declare any development impossible. Two considerations may mark off the federal cabinet from the cabinets of the states. As the senate is bound to be stronger than any existing legislative council, the ministry must be represented

there in strength if not of numbers at any rate of quality. In the second place, in the construction of cabinets and the distribution of offices some regard must be had to the state principle. Both these necessities are recognized in the first commonwealth cabinet. The cabinet consists of nine members, every state contributing one, and the large states—New South Wales and Victoria—contributing three and two respectively. There was great discontent in Tasmania because the representative of that state in the cabinet was only a "minister without a portfolio," *i. e.* without an administrative office. Two members of the cabinet are in the senate, and one of these is the vice-president of the council, than whom no man in Australian politics has a higher reputation for capacity and strength of character. Doubtless the claim for state representation in the cabinet will become less powerful in time, but it must retain some force. Those considerations probably point to large cabinets, since the prime minister will be as little able as in a unitary government to leave out men who are individually able or influential.

Of all political institutions cabinet government is one of the most difficult to reproduce, and it is peculiarly difficult to transplant it to a new state where there are no strong party ties, few political associations, and none of that selection in parliamentary conflict from which the system takes its life. It was fortunate in the case of Australia that the choice of a prime minister was easy; but still a cabinet had to be formed of men who in some cases had little or no personal acquaintance with each other, and who had little political affinity. That circumstances pointed to a cabinet formed principally of men who, having filled for long terms the office of prime minister in their state, might strengthen it by ensuring administrative experience and parliamentary capacity, but hardly promised that unity of expression and action, and of subordination to a common chief which experience has shown to be among the cardinal features of a durable cabinet. After nearly two years, it is still complained of the Barton ministry that it is a group of ministers, each supreme in his own department, but without that sense of unity which the term cabinet has come to imply.

The Working of the Constitution.—As soon as practicable after the proclamation of the commonwealth, writs for the election of a parliament were issued. For the senate the members were elected by each state as a single constituency; for the house of representa-

tives, by single member constituencies except in South Australia and Tasmania where the election for the house as for the senate was by the whole state. The elections did not bring out any very marked feature; the declared policy of the ministry on the tariff which was the important work before parliament, encouraged the belief in a compromise between the views of the protectionists and those who were in favor of a revenue tariff. The candidates were in nearly all cases men already known in political life as present or past members of the state parliament or as candidates for state parliaments. In some instances the contest brought out a very large number of candidates especially for the senate. In New South Wales there were no fewer than fifty candidates for the six vacancies. It is too soon to generalize as to the effect of election by *scrutin de liste* in Australia; but one or two things are obvious. It places enormous power in the hands of any active political organization, as was shown by the success of the labor party in Queensland, or of an influential newspaper, as was shown in Victoria. Where neither of these forces is operative it appears to invite a large number of people to "try their luck" in a contest which may be conducted without either the hard work or the expense of fighting an electoral district in which the candidate may come into personal contact with a large proportion of the electors. The elector is puzzled to make his selection in the long list of candidates and the result is that mere notoriety, however obtained, has a very decided advantage.

Owing to the electoral laws of some states, and the defective state of the electoral rolls in all, it is impossible to show the extent of political interest by a comparison of the number of votes cast with the number of registered electors; but it is certain that the first commonwealth elections excited less interest than do state elections. On the whole, the commonwealth parliament differs not at all from the state legislatures save as they differ from each other. Its members are drawn from a very wide range of occupations. An attempt has been made to ascertain the occupations of the members of the house of representatives, and it appears that it includes eight pastoralists, three farmers, six "connected with mining," three miners, three manufacturers, six merchants, nine agents and accountants, three surveyors, five journalists and one of each of the following occupations: medical practitioner, compositor, hatter, railway

worker, carpenter, watchmaker, minister of religion and hotel proprietor. It is said that one-fourth of the members are lawyers, but the house may have less of a legal tone than might be expected from the fact for more than one reason. In the first place those lawyers who are engaged in the active practice of their profession are necessarily very irregular attendants at the debates; in the second, a large number of Australian lawyers have also had experience in other occupations. This latter consideration is one which applies with some force to other classes of members; in a new country there is a large class who have been everything by turns. One able and prominent member of the labor party describes himself as having been in England a teacher and in Australia "a drover, farmer, blacksmith, oven-mender, bicycle repairer, bookseller, etc.;" he is now a law student. It must be remembered also that there are many cases in which occupations are nominal rather than real and where the truest descriptions would be "politician" simply. The labor members in most cases had ceased to be workers at their trade and had either been members of state parliaments or union officials before entering the commonwealth parliament. In general, the commonwealth parliament contains a sufficient number of the leading politicians of the states to furnish it at its best with more than the average ability of the state parliaments. On the other hand, the average member is quite undistinguishable from the average representative in the states legislatures, and there is a "tail" in the commonwealth as in the states. Many of the ablest men in parliament too are necessarily (as has been observed of the lawyers) irregular in their attendance; and the result is that the ordinary debates are far from fulfilling the hope of a parliament which should display the highest political capacity of Australia. Certainly the high level that was attained in the convention has not been maintained in the parliament.

For reasons which have been already referred to, however, it is perhaps hardly fair to judge the parliament by its first session. Still, a certain anxiety as to the future is justifiable. The long and frequent absence from the centre of their affairs which the parliamentary life of the commonwealth involves for all members from states other than that in which the parliament sits, is a sacrifice which few business or professional men will be able to make; and the £400 a year with traveling allowances which a member is paid

will be insufficient to compensate such men for their loss. Already one hears the declared intention of many members not to seek re-election. The conditions point to a parliament of men sufficiently wealthy to be able to entrust the active management of their private affairs to others, and of men to whom the salary of a member of parliament is an attractive livelihood. Even in the first session, the regular attendance of the members of the labor party has been an important factor in the parliament.

It has been already remarked that amongst people accustomed to the elasticity of the British constitution and of the colonial constitutions modeled thereon, a written constitution though rigid in form is not likely to be exhaustive nor to prevent the play of political forces establishing conventional rules; and it may be anticipated that the working out of constitutional relations both between the different organs of the commonwealth government and between the commonwealth and states will be effected at least as much by such understandings as by the decisions of the courts.

The possibilities of development by usage within the law of the constitution, even the variation of the law itself in those matters—and they are not a few—which are conclusively determined by the action of the political organs, are fully realized in Australia; and the whole of the proceedings of the first session of parliament were marked by an anxiety lest by inadvertence or design some false step should be taken which hereafter might be appealed to as a precedent. Leading members of both houses were sufficiently acquainted with British and colonial history to realize the importance and significance of constitutional forces, and were sufficiently courageous to brave the reproach of wasting time on over-technical details.

A difficulty of a kind which illustrates the necessity for "understanding" has already arisen, and it is one which involving the relations of the imperial government to the commonwealth and the states government, is of the first importance. In the United States where the great impelling force of union was the pressure of dangers from without, it has been unquestioned that the union made the states "to the world, one people," and there has been no question that external relations were the charge of the national government alone. In Canada, the union was deliberately planned to secure the subordination of the provincial governments as the

dominion government is itself the subordinate of the imperial government—"as the imperial government to the dominion, so the dominion to the provinces." Accordingly, not merely has the dominion parliament the residuary legislative power, but its executive exercises control by the appointment of the lieutenant-governor of the provinces, and by the disallowance of provincial acts. In Australia, a principal motive of federation was the desire to speak to the home government with a single voice, upon all imperial matters, including of course all foreign affairs, since a colony has no direct relations with foreign powers. The home government also was not less alive to the importance of conducting its negotiations with a single responsible authority. In pursuance of this object, the Draft Bill of 1891 provided that all correspondence between the states and the home government should be carried on through the governor-general, thus clearly making the commonwealth the single department of external relations for the commonwealth and each of the states. In the convention of 1897 however, this provision was abandoned as inimical to the autonomy of the states, and it was considered that the purposes of the union were sufficiently attained by the assignment to the commonwealth of such matters as were Australian in character or in which the policy of Australia was likely to affect imperial interests. Accordingly legislative power was granted to the commonwealth parliament over "naturalization and aliens," "immigration and emigration," "influx of criminals," "the relations of the commonwealth with the islands of the Pacific," and generally "external affairs." The chapter on the judicature provides also that the high court of Australia shall have original jurisdiction in all matters "arising under any treaty," or "affecting consuls or other representatives of other countries." But the legislative power is not exclusive and while the jurisdiction of the high court may be made exclusive, that court is not yet created. In substance the constitution is a distribution of legislative power, and the executive power is being treated as ancillary thereto. Apart from the few administrative departments of the states which are specifically transferred or may be taken over (defence; customs and excise; posts and telegraphs; lighthouses; lightships, beacons and buoys; and quarantine) the executive power of the commonwealth is declared to "extend to the execution and maintenance of this constitution and of the laws of the commonwealth."

This method of distribution is apt enough where the matters dealt with are such as come within the sphere of government only when brought there by legislative action. But external relations are in general outside the sphere of legislation; they are commonly settled by negotiation and the methods used for their determination are essentially those which are available to the executive rather than the legislative organ. Here, the ordinary processes of government are reversed; the question of policy is determined by the executive and it is the legislative action which is ancillary. The federal government from the first assumed that external affairs as a whole, and not merely the execution of legislation thereon were under their control; and one of the seven departments of state established on the day of the foundation of the commonwealth, was the Department of External Affairs, the importance of which was evinced by the fact that its portfolio was taken by the prime minister himself. Very recently, the assumption of the commonwealth government has been challenged by the state of South Australia. The government of the Netherlands having complained of the breach of a treaty in force in South Australia, as to deserting foreign seamen, the colonial office made representations to the commonwealth government on the subject and that government proceeded to make inquiries. The South Australian government therefore protested against this action as an infringement of its constitutional rights, and contended that the external relations of a single state were a state concern, and that neither the legislative nor the executive power of the commonwealth was exercisable except in matters concerning the commonwealth as a whole. The commonwealth government on the other hand contend that the whole spirit of the union makes the external relations of every state a matter of common concern, and that the control of the executive arises from the very nature of the union and not merely as a consequence of the exercise of legislative power. This is a far reaching and at first sight startling contention; its tendency is practically to supersede the direct relations of the home government with the states governments save in matters of form such as the appointment of a state governor; but if the aspiration of an "Australian nation"—"one people, one destiny"—is to be fulfilled, it is hard to see how the general government can permit any organization within its territory to have a distinct "foreign" policy, to involve the whole by its relations with either the home

government or foreign states, or to be controlled in any of its acts by a political superior which is external to the commonwealth itself.

The problem is from its nature hardly to be determined by any tribunal; it belongs to the class of matters in which the rule must be settled by the practice of the political departments.

There is another aspect of federation as a factor in imperial relations. The federation of the Australian colonies was long desired by the home government both for counsel and for action—that there might be a single voice to speak for Australia, and a single authority capable of acting for her; and this entirely coincided with the wishes of the Australian people. But it was also very generally believed in England that united Australia would be more disposed as more able to assume a greater share of imperial burdens, and that the road to imperial federation would be formed by the consolidation of the several parts of the empire into larger groups, with an attendant extension of the political horizon of all. In Australia, however, the federal movement was in no way associated with any scheme of imperial federation, a policy which Australia still regards with suspicion as detracting from her powers of self-government and committing her to expenditure upon unfamiliar objects. The movement was however essentially part of that great nineteenth century movement towards the consolidation of groups upon the basis of nationality. Only the future can show whether the national principle in Australia has received the fullest political expression of which it is capable and what the dominant national principle is to be. While on the one hand, those are greatly mistaken who regard Australian federation as a stretching of the hands to imperial federation, so momentous a step cannot be without influence, the nature of which cannot yet be foreseen, on the greater problem of imperial unity.

The writer has already[3] hazarded the opinion that the development of the constitution of the commonwealth will be guided less by judicial construction than has been the Constitution of the United States. One reason for this opinion is to be found in the character and tradition of Australian courts, another in the political and social condition of the country, another in the comparative ease with which the Australian Constitution can be amended. The Australian colonies have been the scene of many constitutional con-

[3] Constitution of the Commonwealth of Australia p. 332.

flicts but they have been in general political rather than legal in character and have rarely been brought to the courts for determination. Though the colonies have lived under a double legislative authority, the power of the imperial parliament has been rarely exerted and in all cases its supremacy was so well established that no conflict could arise. On the other hand within the colonies themselves, the constitutions have been formed on the imperial model with its plenitude of power and supremacy of the legislature over the other organs of government. Amongst the most common objections to federation was the complaint that a "cast-iron constitution" was a novelty, something essentially different from the parliamentary rule to which the colonies had been accustomed. When constitutional cases have come before the courts, the judges have generally been disposed to take short views; to lay stress upon the fact that such causes were to be determined by no other rules than those applicable to other causes; briefly, to apply "the lawyer's rigor" rather than "the statesman's breadth of view." This tendency has undoubtedly been encouraged by the fact that to a greater extent than in America or in England, the judicial bench consists of men who are without political experience. It has often been remarked that in Australia, as in some other countries, the successful professional man and the mercantile community hold aloof from politics; and at the bar, few men can risk their professional prospects by participation in politics until they have reached an age when professional work demands all their energies and leaves them little time or inclination for another and most exacting occupation.[4] It is greatly to the credit of Australian politicians that the main road to the bench has not been political service; but the absence of political experience and even of anything like a keen interest in and acquaintance with political affairs, must have its effect in the determination of causes in which political results are a factor in the determination of legal issues. The extent of the influence will of course be largely determined by the personal constitution of the high court; but it has been already pointed out that the establishment of the court is likely to be deferred, and in any case public opinion will be very jealous of the appointment of "politicians" to

[4] I am speaking of the past generation. During the last few years, there has been a decided tendency on the part of the leaders of the bar to turn to politics; and the federal parliament includes some of the most prominent lawyers from nearly all the colonies.

the "billets." Again, the legal issues presented to the courts can hardly be of the same supreme importance as those which have arisen in the United States, where again and again the courts have been faced with problems affecting the national security. Finally, the constitution can be amended with comparative ease.

There are not a few persons who, calling to mind the demonstrations which attended the inauguration of the commonwealth and the opening of the first parliament of the commonwealth, and contrasting them with the criticisms of the press to-day, wonder that in so short a time that enthusiasm which called the commonwealth into existence should have given place to what they deem an antagonism to federation and all its works; and for this untoward result are disposed to cast great blame upon the commonwealth government and parliament. In such a matter there is apt to be much misconception and exaggeration. In the first place, the pageantry and festivity of the visit of the imperial troops and of their royal highnesses the Duke and Duchess of Cornwall and York, must not make us forget that federation was accomplished not by a spontaneous national act but as the result of a succession of political conflicts, and that to the last the forces for and against federation in some of the colonies were very evenly matched. It was less that Australia as a whole was enthusiastic than that there was a sufficiently large number of enthusiastic persons to make the movement in the end popular enough to command a majority of the votes. In the second place, federation like every other important political change, raised great expectations of vast and immediate material benefits; and the disappointment of many has been correspondingly great that the impossible has not happened. But perhaps most of all the apparent change of sentiment is due to the fact that the new and complex machine could not settle down to work with the old machinery without a good deal of friction; and it was inevitable that the early years of the commonwealth should offer occasions in plenty, some trifling and some important, for misunderstanding between the new government and the states. Much remains to be done before the real nature of the new union is determined, more before it is realized. As yet, the states governments cannot readily recede from the position they have occupied so long as the guardian of the states' interests and are by no means disposed to leave the protection of those interests to those who are con-

stitutionally entrusted with them—the representatives of the state in the commonwealth parliament. Nor is it singular that public opinion in the states should in general support the action of the states governments and regard with jealousy the action of the commonwealth. It will take time for the people to become familiar with their relation to and their part in the new authority, which at present they are disposed to regard as something external to themselves.

Apart altogether from the question of encroachment of one government upon another, the establishment of federation is bound to have effects upon the constitutions and functions of states governments, if for no other reason than that the principal source of revenue in all the colonies—customs and excise—is now under the sole control of the commonwealth government; and the financial arrangements of the states must now be determined less by the views of policy entertained by the states government than by the action of the commonwealth government which is controlled only by the provision in the constitution whereby of the amount collected from customs and excise, three-fourth must be returned to the states. The states governments are in all cases of course powerless to affect the amount of revenue available for them from this source, and are impressed with the want of attention which their interests are likely to receive from the commonwealth government and parliament. The commonwealth in 1901-2 collected £8,692,750; the income from all sources was £11,087,334 of which not more than £3,681,684 was expended on federal services. The commonwealth government has thus a revenue vastly more than is necessary for its own expenditure, it is therefore unlikely to press parliament to enact revenue duties the sole effect of which is to increase the surplus available for the states, and the abandonment of the government of the tea duty and the kerosene duty in the first session in deference to parliamentary opposition, has at once embarrassed several of the states and aroused fears for the future. The other fear of the states is that the possession of a revenue far beyond its needs may encourage the commonwealth government and parliament to recklessness in expenditure. This is probably a real danger in the future, though the statements made as to actual extravagance by the commonwealth seem almost without exception unfounded. There is growing a strong feeling in favor of the transference of the debts of the states to the commonwealth. Such a transfer would practically absorb

the commonwealth surplus and to that extent check any tendency towards extravagance in the commonwealth parliament; and there would be comparative independence of commonwealth and state finance, each relying solely on the sources of revenue under its own control. It is believed also that a conversion of the loans could be obtained by the commonwealth on terms more favorable than could be expected by any state, and that thus the heavy interest charge would be diminished.

It has been peculiarly unfortunate that the foundation of the commonwealth has synchronized with the realization of the disastrous effects of the drought, and that the necessary adjustments of finance should have to be made at a time when the disturbance of familiar conditions and the shrinkage of resources introduced every element of difficulty into the situation. The expectations of the state treasurers have in nearly every case been disappointed, partly by the failure of sources of revenue relied on, partly by the commonwealth debiting them with a heavier expenditure than had been allowed for. The charge of commonwealth extravagance which has been loud in the land, has been already referred to. It is sufficient to add that in some cases the shortage of which the states complain is the immediate effect of things done or left undone by the states governments in anticipation of the transfer of services to the commonwealth government. The natural tendency of all government expenditure is to increase, and in some cases, notably in Victoria, the recent increase had been very heavy. For this, many reasons were given; the most notable of the new charges was of course that for old age pensions. The whole character of modern legislation is constantly to add new and costly administrative machinery. Moreover, increased expenditure was the inevitable result of some years of stringent and parsimonious economics resorted to to show a temporary "balancing of the ledger." The presentation for the first time of the figures for the whole of Australia in connection with federal expenditure, and the existence of a large deficit in several of the states led first the people and then the government and parliament to see that the maintenance of public credit required sharp measures. It was in Victoria that the "reform" movement began and carried all before it. The labor party was ready to meet the difficulty by a resort to heavier direct taxation; but the classes in the towns on whom direct taxation

would fall joined with the farmers in establishing an organization the most powerful seen in Australia for many years. Their programme was a large reduction in the cost of legislative and administrative machinery and government. The cry was taken up by the press; and a characteristic agitation in which distorted figures and misleading comparisons of course played a part, placed a reform government firmly in the seat of power. A reduction of the number of members of parliament, of the number and salaries of ministers, the dismissal and retrenchment of public servants have either been accomplished or are the orthodox political creed of the moment in most of the states. Some extreme reformers, believing that the commonwealth is the source of all their woes, are in favor of a dissolution of the federal union, and join those who for some special state grievance, threaten secession. Other reformers would abolish the state government and parliament altogether, and grant plenary powers of government to the commonwealth parliament. Neither course is represented by any effective body of public opinion; but it may be worth while to point out certain special reasons which appear to make unification undesirable and impracticable. The very divergent conditions in the several parts of Australia would make uniformity of law and administration impossible unless flexibility and adaptability were sacrificed. To provide for the divergent conditions would involve loss of popular control and would substitute bureaucratic government. And it is just in its vast public service that Australia already finds one of its greatest political problems.

Each of the states of the commonwealth has exercised through its central government a large number of functions such as *education* and *police* which are in many other countries borne by the localities; it has assumed services like the railways which are provided for by private enterprise; it has had a great estate to develop and manage, roads to make, bridges to build, water to supply. The functions of an Australian government are indicated by the titles of several of the ministries unknown in other countries, minister of land, minister of water supply, etc. In addition there is of course the ordinary work of administration common to all governments. Now these conditions have required the employment of large numbers of hands and the result is that a relatively large number of persons is in the employment of the state. The creation of offices,

the filling of offices, and promotions are of course a most obvious means of rewarding political service, averting political opposition, and passing on to the state the obligation of providing for needy relatives and friends of those in power. The more widely spread is political power the more potent will be the forces intensifying these evils. At an early time in the history of the colonies it became necessary to check these influences. And no small part of the history of the colonies under responsible government has been the attempt to remove from political influence those departments of state activity in which it was likely to have the most sinister effects, as in the construction and management of railways. The course taken in regard to the public service has been to establish a system whereby with few exceptions, admission to the public service was through a competitive examination, the higher offices being filled by promotion from the lower ranks. The security of tenure which in England exists only in virtue of a healthy practice is in Australia commonly secured by statute, which establishes the several classes and divisions of the public service and their salaries, and indicates the lines upon which promotions are to be made. The system is worked by a non-political individual or body of public service commissioners, whose duty it is to make arrangements for the examinations for admission whenever the exigencies of the service require new hands; and to make or recommend promotions in the service in accordance with the provisions of the act. The result is that so far as the clerical branch of the public service is concerned, a tolerably sufficient protection is afforded against the evils of political influence, whether in the employment of superfluous hands or in the way of promotions. If the sole object of the public service laws were to guard against gross scandals and to protect the public service and the public servant against sinister influence, the system would leave little to be desired. It is an admirable police system and a fulfillment of the state's function as the creator and protector of rights. We are in fact thrown back upon our older conception of *office* as *property;* the *rights* of the public servants—to pay, to promotion and to privileges—are a matter of continual litigation in the courts,[5] and of debate in parliament and in the press, for under parliamentary government no effort to eliminate

[5] Last year the Supreme Court of Victoria granted a ***mandamus*** to the Public Service Board calling on them to consider the claims of a public servant to a vacant office. The claim was considered and the applicant appointed.

political influence can or ought to eliminate parliamentary control, and the public servants are a large and compact mass of solid voting power in a country where permanent political organization is almost unknown. The defect of the system is of course that it ignores the fact that the business of the state is a very complex business, which can no more be run on purely negative lines than that of a trading company can be run on the single principle of protecting itself against dishonesty and of doing "justice" amongst its employees. To a very large extent the state has deprived its government of that choice of fit persons upon which the successful conduct of business of every kind principally depends. The average man is deprived of those incentives to industry and zeal which affect the ordinary man outside the service, the baser man of those fears which if he were outside would ensure a decent standard of conduct, the abler men in the service see their promotion indefinitely postponed to the claims of seniority; and the highest posts are apt to fall to men who have no better claim to them than long service in employments which as often as not are of a kind to fit them ill for positions of responsibility. The problem, as was said by the attorney-general for the commonwealth during the debates on the commonwealth Public Service Bill, is how to control the public service by means of statutes and yet infuse into it something of the spirit and energy of private business affairs. It is not surprising that from time to time the people complain that the public service appears to exist for the interest of the officers, and not for the business of the state, and takes its revenge by "savaging" the public servants—in wholesale dismissals and in severe reductions of pay. The position of the public servant has been so much regulated by *law,* his rights so secured by statute, that politicians and the public not unnaturally tend to regard the *law* as exhaustive of his rights and of their obligations towards him, unmindful of the fact that if you intend to continue to employ a person and to trust him it does not pay to govern your relations with him solely by a lawyer's rigor. In fact, neither the parliament, the people nor the public servants—who as a body are devoted to a system which offers regular employment, regular pay and regular promotion—have risen above the conception of the public office as a *billet,* and it is the people who through their representatives have created the present system in order to protect themselves from evils of which they are not without experience.

It has now become part of the settled practice of some of the states whenever there is a difficulty in balancing the ledger, to resort to the salaries of the public servants, and to make graduated percentage reductions, in some cases as much as 15 and 20 per cent. Often the measure is represented as one of clemency, the alternative of dismissals. Every successive attack is of course a new precedent; it can generally be shown that in some other state or at some former time, the reductions suffered were far more severe, and that after all, if a man's salary is reduced on the higher scale it can be only because he is fortunate enough to have one of the better billets. The public service naturally resists and uses the full strength of its political organization against the government which proposes the tax; and then follows a struggle of an unedifying and demoralizing kind between the government and its servants. Sometimes the public servants are successful; and they claim the credit of dislodging more than one government. But in general the public service is aware that a trial of strength on a defined issue is to be avoided—that they may count on the hostility of forces usually latent but which such a contest is likely to arouse. The real strength of the public service in politics lies in its watchfulness and the continuity of its pressure in quiet times, when the political interest of the public slumbers. The result is that, in addition to that lack of efficiency which is one outcome of the Australian system, the relation of the state and its servants is one of alternate squeezes, destructive of the *morale* of the service. One remedy which has been suggested is the disfranchisement of public servants; another the allotment of representatives to the public servants as a distinct constituency. In the small parliaments of Australia—and as has been shown they are likely to be smaller in the future—it is very doubtful whether the latter course would diminish the influence of the service upon politics, for three or four members ready to dispose of their votes to the side which offered their constituents the best terms would often be sufficient to turn the scale. To disfranchise the public servants altogether would be to make a divorce between citizenship and service, which for many reasons is undesirable, while it would deprive the service of all means of protecting itself against attack.[6] And in Australia as elsewhere, there is wide-

[6] Since this was written the government of Victoria has proposed to parliament to assign special representatives to the public servants in both houses of parliament.

spread ignorance of the value of the several kinds of work performed by the state, and a very exaggerated estimate of the emoluments of public servants, and of the economies which can be effected therein without impairment of efficiency. In general the salaries paid by the state for the higher kinds of work are much smaller than those paid for corresponding service of like responsibility by private employers; and amongst the reasons why the state so often falls short of private service in the efficiency of its undertakings must probably be placed the fact that it offers comparatively small rewards to those who have the direction of its functions. But this is not peculiar to Australia.

In all the states the relation between the legislative and executive organ is that which is variously known as "party government," "cabinet government," or "parliamentary government;" even the term "responsible government" has been broken in and specialized so as to imply not merely the self-government of a colony, but that particular form of it which is modeled upon English institutions. It has been more than once pointed out that a country in which there are no well defined party lines and where groups take the place of two organized parties, is ill-fitted for such a system of government, and the instability of Australian ministries until recent years certainly confirmed the opinion. The Australian member has been aptly described as the parliamentary agent of his constituents, he is the medium of communication between them and the central administration, the man who has to do the district's business with the several departments of state. The man who is most expert or who is believed to be most expert in looking after the interests of his constituents is of course the man most likely to be elected. Though there are ministerial and opposition programmes they are not likely to differ greatly from each other; it is the commonest feature of an election that the contest is between a number of candidates professing identical opinions; and often there is much doubt whether the successful candidate will take his seat with the government or the opposition. Once elected, the member is carefully watched by his constituents as an agent by his employers; he is anxious to show himself zealous in their interest; and a significant practice has grown up of intimating any government concession to the district through the member. Even a minister is not exempt from looking after his constituents' interests and it is not

uncommon to see one minister introducing a deputation to a colleague. Great national services will hardly avail the member who has been lukewarm in his district's business. The result is that in parliamentary elections, at any rate in the rural districts, personal and local considerations overshadow party. It is useless to cavil at this; it is the inevitable outcome of a condition of things in which the instruments of the state are the principal factors in production and transport as they are becoming in distribution. The result is that a member is generally very free to determine whether he will support this or that ministry; and that the instability of ministries is not greater, is due partly to the fact that when a man becomes a member he has to choose on which side of the house he will sit and making that choice forms associations which exercise great influence upon his action in parliament, partly to the disposition of modern ministries to treat important matters as open questions, and to accept the decision of the house against their own policy. Recent events in Victoria have been remarkable as indicating at any rate a temporary reaction from this. The ministry brought down proposals for the reduction of the salaries of all civil servants receiving more than £125 a year. A compassionate house struck out the £125 minimum with the intention of fixing a minimum so much higher that the value of the measure as one of retrenchment would have been lost; and it may be noted as a curious fact that the leaders of the opposition voted with the government. The government at once advised the governor to dissolve parliament, and their action in so doing was the subject of surprised resentment on the part of the majority so thoroughly accustomed had they become to the government accepting the decision of the house even in regard to the financial arrangements of the year. The premier put forward a manifesto in which he appealed to the electors to co-operate with him in restoring the once familiar principles of responsible government and ministerial leadership in parliament. A committee of the cabinet was appointed in conjunction with a citizens' league to examine the credentials of candidates and from day to day issued lists of those whom they were prepared to accept as government supporters. The result was the return of a house which for some time at any rate will have to acknowledge the lead of the government.

The character of Australian elections and the prevalence of

local and personal interests therein may seem inconsistent with the fact that Australian parliaments are prolific in legislation and that of a kind which excites the interest of the world. This is due in the first place to the necessity for what in want of a better term, may be described as regulative or administrative legislation incident to the management of the state domain. To a very great extent "socialistic legislation" is inevitable in a country like Australia, whatever the mode of its government—the state is a large proprietor and must develop its estate. In this work many experiments have to be made and no doubt many failures to be recorded. The experiments which have been made in land settlement in Australia cover the whole range from extreme individualism to pure communism; the land laws of New South Wales are perhaps unequaled in complexity by those of any country. It may be added that the attempts to settle the people on the land strenuous as they have been during the last ten years have not been markedly successful; and the proportion of population in the metropolis to the total inhabitants of the state shows no tendency to diminish.[7] But perhaps the principal factors in the legislative activity of the American parliaments is the existence in each of the labor party which with the civil service is the one permanent organized force in politics. Standing outside the familiar array of parliamentary forces, the labor party commonly holds the balance between the government and the opposition. It is drawn almost exclusively from the great cities, and whatever the high sounding aims declared in programmes its practical activity is devoted in the main to a policy of regulative legislation which is operative in the towns and is directed to the promotion of the interests of the wage-earner in the towns. Here it has been the great driving force in parliament and to its influence must be attributed the most distinctive measures of recent years—the Factory Acts of Victoria with their wage boards, the Industrial Arbitration Acts of New South Wales, South Australia and Western Australia, old age pensions, the restriction of alien immigra-

[7] The percentage of population in the capital of the several states in 1891 and 1901 is shown in the following table:

	1891.	1901.
New South Wales	34.22	35.91
Victoria	43.05	41.14
Queensland	22.61	23.83
South Australia	38.70	44.01
Western Australia	15.23	19.66
Tasmania	22.81	19.77

tion, the employment of colored labor. Another political force is that of imitation; the Australian colonies have always had a unity outside any organic arrangements, and the fact that some novelty has been introduced in one state is a force which drives all the rest forward lest they should appear to be behind their neighbors. Finally, no small part of the legislative activity is due to the fact that the parliaments have not only adopted but assimilated the practice of the House of Commons, and have borne with patience the trammels of an intricate system of procedure. It is unfortunate that large numbers of people know the Australian parliaments, as other public bodies, only by reports of occasional "scenes." In general there is great respect for the forms of the house, and the result is an orderly mode of conducting business in which real progress is made.

It remains to say a word on local government. All municipal institutions in Australia have been created from above. It has been already mentioned that education and police are under the central government. A large part of the country is too little developed and too sparsely populated to support local institutions resting on a popular basis. Where local institutions exist outside the large towns, they can hardly be described as healthy, certainly not as vigorous plants. The central government is expected to provide money for all sorts of purposes, and there is in addition a considerable government subsidy which however is being diminished with a view to its extinction. The rating even in the towns is low, and in the country districts the rate small as it is is often struck upon a ridiculously inadequate valuation. A curious fact significant in more ways than one of the lack of vitality in local government, is that notwithstanding the democratic character of the central government, municipal institutions are those of fifty years ago. The electoral franchise is based on the ratable value of property, and generally plural voting according to the value of the property is provided for even in recent acts. The municipal officers including the mayor or president are appointed or elected by the municipal body, of which the members retire by rotation. This state of things exists with very little opposition in a country where such features in the central government have long since ceased to exist or, where they continue, are fiercely assailed. It is probable that the slow development of municipal institutions is to some extent

due to the fact that the central government looms large in the rural district as owner of the land, railways and other sources of wealth which in other countries belong to individuals or corporations, and it is not probable that whenever local government does develop there will be a good deal of friction between the municipality and its too powerful subject, the state. It need hardly be said that federation in itself in no way changes the character of Australia as a land distinguished by the highly centralized character of its government; but it is not unlikely to stimulate local government by forcing upon the localities greater financial responsibility. Hitherto, the Australian governments have had under their control large revenues derived from indirect taxation. Now they will merely receive a balance from the commonwealth government which will in most cases be insufficient for their needs. They will therefore be driven to direct taxation which will generally mean a tax on land. The revenue both of the state and the local government being thus derived from the same source, the localities may be found not unwilling to assume the burdens of local expenditure on account of the greater control which they will secure over it. If this result does follow, and the franchise remains unaltered it is not unlikely that a great change will come over the character of Australian expenditure. In the rural parts especially when men realize that it is their own money they are spending, they will be cautious; and the lavishness of the past may be succeeded by a period of economy if not of parsimony.

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